

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

EAGLES LANDING DAYCARE &)	
LEARNING CENTER,)	
)	
Plaintiff,)	
)	CIVIL ACTION FILE
v.)	
)	NO. 1:14-CV-00465-CAP
SPARTA INSURANCE COMPANY,)	
)	
Defendant.)	

**DEFENDANT SPARTA INSURANCE COMPANY'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT FOR
DAMAGES AND FOR TRIAL BY JURY**

COMES NOW SPARTA INSURANCE COMPANY, Defendant in the above-styled action, and files this, its Answer and Affirmative Defenses to Plaintiffs' Complaint for Damages as follows:

FIRST DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendant asserts the affirmative defense of accord and satisfaction.

THIRD DEFENSE

Defendant pleads the affirmative defense of payment.

FOURTH DEFENSE

Plaintiff has failed to comply with the conditions of the insurance policy at issue and, therefore, payment under the policy is barred.

FIFTH DEFENSE

Defendant has breached no duty owed to Plaintiff.

SIXTH DEFENSE

Defendant has acted reasonably, in good faith, and with skill, prudence and diligence exercised by others in the industry.

SEVENTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because Defendant's activities were reasonable and in accordance with the applicable standard of care.

EIGHTH DEFENSE

Plaintiff has failed to comply with the conditions precedent to filing a suit under the terms of its insurance policy and, therefore, the claims should be dismissed.

NINTH DEFENSE

Defendant responds to the numbered paragraphs in Plaintiff's Complaint for Damages as follows:

JURISDICTION AND VENUE

1.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Complaint for Damages and, therefore, can neither admit nor deny same.

2.

Defendant admits the allegations contained in Paragraph 2 of Plaintiff's Complaint for Damages.

3.

Defendant admits the allegations contained in Paragraph 3 of Plaintiff's Complaint for Damages. However, while Defendant admits the amount in controversy exceeds \$75,000, Defendant denies the "value" of this case exceeds that amount.

4.

Defendant denies as pled the allegations contained in Paragraph 4 of Plaintiff's Complaint for Damages.

FACTS COMMON TO ALL COUNTS

5.

Defendant admits the allegations contained in Paragraph 5 of Plaintiff's Complaint for Damages.

6.

Defendant admits the allegations contained in Paragraph 6 of Plaintiff's Complaint for Damages.

7.

Defendant admits the Policy provided insurance coverage for hail and storm related damages on the Insured Premises and loss of community income and extra expense as alleged in Paragraph 2 of Plaintiff's Complaint for Damages. Defendant also admits the Policy provided for such other customary coverage as specifically set forth in the Policy. Defendant denies that with respect to the building, the coverage at all times was and is afforded limits were on a Replacement Cost basis. Defendant further states the Policy provided benefits on an actual cash value basis, until such time as replacement of the property is made, at which time Replacement Cost Benefits are available, pursuant to the terms and conditions of the Policy. Defendant admits Plaintiff timely paid the required

premiums due. Any other allegations contained within Paragraph 7 of Plaintiff's Complaint for Damages is hereby denied.

8.

Defendant admits some damage was caused by the aforementioned storm, but disputes the extent of the aforementioned damage and coverage therefore.

9.

Defendant admits the allegations contained in Paragraph 9 of Plaintiff's Complaint for Damages.

10.

Defendant denies the allegations contained in Paragraph 10 of Plaintiff's Complaint for Damages.

11.

Defendant denies the allegations contained in Paragraph 11 of Plaintiff's Complaint for Damages.

12.

Defendant denies the allegations contained in Paragraph 12 of Plaintiff's Complaint for Damages.

13.

Defendant denies the allegations contained in Paragraph 13 of Plaintiff's Complaint for Damages.

COUNT I.
COUNT I. BREACH OF CONTRACT

14.

Defendants hereby incorporate, as if fully set forth herein, their responses to Paragraphs 1 through 13 in response to Paragraph 14 of Plaintiff's Complaint for Damages.

15.

Defendant admits the allegations contained in Paragraph 15 of Plaintiff's Complaint for Damages.

16.

Defendant denies the allegations contained in Paragraph 16, including subparagraphs a. and b. of Plaintiff's Complaint for Damages.

17.

Defendant denies the allegations contained in Paragraph 17 of Plaintiff's Complaint for Damages.

COUNT II.
BAD FAITH FAILURE TO PAY

18.

Defendants hereby incorporate, as if fully set forth herein, their responses to Paragraphs 1 through 17 in response to Paragraph 18 of Plaintiff's Complaint for Damages.

19.

Defendant denies the allegations contained in Paragraph 19 of Plaintiff's Complaint for Damages.

20.

Defendant denies the allegations contained in Paragraph 20 of Plaintiff's Complaint for Damages.

Any allegations of Plaintiff's Complaint for Damages not heretofore specifically responded to by Defendant are hereby denied. Defendant further denies that Plaintiff is entitled to recover from Defendant in any sum or manner whatsoever.

WHEREFORE, having fully answered Plaintiff's Complaint for Damages, Defendant SPARTA INSURANCE COMPANY prays as follows:

- (a) That it be discharged without liability to Plaintiff;
- (b) That it have a trial by a jury to all issues properly triable by a jury;

(c) That costs be assessed against Plaintiff; and
(d) That it have such other and further relief as the Court deems just and proper.

This 11th day of April 2014.

Respectfully submitted,

SWIFT, CURRIE, McGHEE & HIERS, LLP

By: /s/ Pamela N. Lee
Pamela Newsom Lee
Georgia State Bar No. 198981

Attorney for **Defendant**
SPARTA INSURANCE COMPANY

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CERTIFICATE OF COMPLIANCE

Counsel hereby certifies that this document has been prepared with one of the font and point selections approved by the Court pursuant to L.R. 5.1(C) of the Northern District of Georgia, specifically, 14 point, Times New Roman font.

This 11th day of April 2014.

SWIFT, CURRIE, McGHEE & HIERS, LLP

By: /s/ Pamela N. Lee
Pamela Newsom Lee
Georgia State Bar No. 198981

**Attorney for Defendant
SPARTA INSURANCE COMPANY**

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CERTIFICATE OF SERVICE

I hereby certify that that I have this day electronically filed ***Defendant Sparta Insurance Company's Answer and Affirmative Defenses to Plaintiff's Complaint for Damages and for Trial by Jury*** with the Clerk of Court using the CM/ECF system and served upon all counsel of record, by electronic filing and/or United States mail, postage prepaid, and properly addressed as follows:

Jeffrey D. Diamond
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3330 Cumberland Blvd., Suite 600
Atlanta, Georgia 30339

Bill L. Voss
Scott G. Hunziker
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The Voss Law Center
26619 Interstate 45
The Woodlands, Texas 77380

This 11th day of April 2014.

SWIFT, CURRIE, McGHEE & HIERS, LLP

By: /s/ Pamela N. Lee
Pamela Newsom Lee
Georgia State Bar No. 198981

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SPARTA INSURANCE COMPANY**

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